



Republican Policy Committee

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A Pre-Election Promise Of A Post-Election Pardon?

President Dangles Hope of Pardon for Whitewater Partners

"In some extraordinary statements Monday, President Clinton stoked Susan McDougal's hopes of a Presidential pardon, and stepped up the White House campaign against Independent Counsel Kenneth Starr."

Wall Street Journal editorial, September 25, 1996

"In [a] Public Broadcasting Service interview with Jim Lehrer, Mr. Clinton said he had given no thought to pardoning any Whitewater defendants, then laid out in some detail how the system for considering pardon petitions works. That had the disconcerting effect of hinting that loyalists might be rewarded for not testifying. Both comments create the impression that it is the White House that wants to use partisan thrusts to disrupt the legal process, not Mr. Starr..."

New York Times editorial, September 26, 1996

"Former Federal Judge Robert H. Bork said statements by Mr. Clinton about possible pardons for his former business partners 'come very close' to obstruction of justice. 'He's offering every inducement for people not to talk to the special prosecutor. . . It's problematic, there's no doubt about it. It's morally questionable,' Mr. Bork said."

Washington Times, September 29, 1996

Contempt of Court

On May 28, 1996, a 12-member jury in Little Rock returned guilty verdicts on 24 felony counts against Arkansas Governor Jim Guy Tucker, Jim McDougal, and Susan McDougal. In particular, Susan McDougal was convicted on four felony counts involving a fraudulent \$300,000 loan, of which \$50,000 was diverted into a Whitewater account. At the time the fraudulent loan was made, Bill Clinton was Governor of Arkansas and he and his wife were co-owners of the Whitewater Corporation with the McDougals.

On September 4, 1996, U.S. District Court Judge, Susan Webber Wright held that Susan McDougal was in contempt of court for her refusal to answer questions put to her by the Whitewater grand jury in Little Rock, Arkansas. As reported in numerous press accounts — and as Mrs. McDougal herself has acknowledged — the questions put to her by the grand jury were simple: 1) Did Bill Clinton, her former Whitewater partner, have any knowledge of the fraudulent loan she obtained from David Hale?; and 2) Did Bill Clinton testify truthfully during her (Susan McDougal's) trial?

Rather than simply and truthfully answering the questions, Susan McDougal decided to risk an additional 18 months of jail time (on top of her earlier two-year sentence on the loan conviction) by refusing to testify. Why?

The answer may have been given by none other than the President himself.

Contempt of Office

On September 23, 1996, while Susan McDougal was still being held in jail for her refusal to answer the grand jury's questions, President Clinton appeared on PBS's "NewsHour With Jim Lehrer." During the interview, Mr. Clinton not only refused to rule out the possibility of a presidential pardon for Susan McDougal and others, but denied the very legitimacy of the Independent Counsel's Whitewater investigation, even going so far as to suggest that Kenneth Starr is attempting to coerce Mrs. McDougal into perjuring herself before the grand jury.

Here is part of the conversation:

Lehrer: Susan McDougal told a federal judge in Little Rock. . . she believed Kenneth Starr. . . 'was out to get the Clintons,' end quote. Do you agree with her?

Clinton: Well, I think the facts speak for themselves... [Starr's attorneys] wanted her to say something bad about us, whether it was the truth or not. And if it was false, it would still be perfectly all right. . . . That's what her lawyer said.

Lehrer: Do you believe him?

Clinton: . . . There's a lot of evidence to support that.

Lehrer: But do you personally believe that's what this is all about, is to get you and Mrs. Clinton?

Clinton: Isn't it obvious?

[Excerpted from *The Wall Street Journal*, 9/25/96, quoting from PBS's "NewsHour With Jim Lehrer," 9/23/96.]

Some would beg to differ, including the *Washington Post*'s Richard Cohen, who in the September 26, 1996, edition reacted to the above dialog in this manner: "In fact, the suggestion

that Starr has sought to keep a witness in jail because she won't frame the president is preposterous on the face of it. Either that, or it is time to march Starr to a wall and give him his last cigarette."

The *New York Times*' editorial writers also disagree: "...Mr. Clinton is ... the President, and his remarks undercut a legal process that is going forward in an orderly way. . . . As for Mr. Starr, . . . the public record is that he has thus far proceeded professionally and prudently in guiding his investigation so as to not disrupt the election" [9/26/96].

Further, Cohen, in his op-ed piece [attached], goes on to suggest there is something to the fact that Clinton "refused to rule out a presidential pardon . . . These are witnesses who might be able to do him considerable harm. You do not have to be a member of the Wall Street Journal's rabidly anti-Clinton editorial board to detect the whisper of an offer there."

The "offer" he is referring to here is the President's oblique promise of a pardon in exchange for Mrs. McDougal's continued silence on the question of Mr. Clinton's possible involvement in the \$300,000 loan deal. Any such offer, as Judge Bork points out, would amount to nothing short of obstruction of justice.

Is President Clinton setting the stage for promoting the view that a second-term pardon for Susan McDougal would be a moral obligation on his part? Editorial writers across the political spectrum do find this whole story disturbing since it is Bill Clinton himself who is the focus of the grand jury's questions that Susan McDougal refuses to answer. Susan McDougal is in jail for contempt of court, because she is refusing to answer questions about Bill Clinton — who as President is now dangling offers of a pardon.

As the *Wall Street Journal*'s editorial writers put it, "In a second term, would President Clinton fire Mr. Starr, or pardon Susan McDougal, or generally use his Presidential powers to frustrate the law, or pardon his wife if indicted? In the coming election, it seems to us, the country ought to know what kind of Constitutional crisis it may be buying."

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[Attachments: *Wall Street Journal* editorial, 9/25/96; *Washington Post*, Richard Cohen, 9/26/96]

WEDNESDAY, SEPTEMBER 25, 1996

REVIEW & OUTLOOK

Pardon Me

In some extraordinary statements Monday, President Clinton stoked Susan McDougal's hopes of a Presidential pardon, and stepped up the White House campaign against Independent Counsel Kenneth Starr. Before the voters go to the polls in November, it seems to us, Mr. Clinton owes them a forthright explanation about what he would do about both of these issues in a second term.

Mrs. McDougal, a felon convicted by a jury of Arkansans, has been refusing to tell a grand jury whether Mr. Clinton knew about illegal loans, and whether he told the truth in testimony in her trial. There being no legal basis for this refusal, Judge Susan Webber Wright has committed her for contempt, in advance of her prison sentence on Whitewater charges. If Mrs. McDougal believes the President did not know and did tell the truth, she can purge the contempt by testifying to this effect.

Instead of taking this simple step, she and her attorney—old Arkansas hand Bobby McDaniel—have been attacking Mr. Starr. They say he wants her to make up evidence against the President, so they refuse to tell the truth. This non sequitur has been extensively and uncritically advertised by Larry King and Bryant Gumbel. It is now amplified by the President of the United States.

Especially since Mrs. McDougal also has been dropping hints on a Little Rock radio station that she may decide to testify after all, her position can be understood only as a ploy for a Presidential pardon. Pressed by Jim Lehrer's questioning (excerpts are printed nearby), the President was careful not to rule out the possibility. Readers, and for that matter Mrs. McDougal, may appreciate a briefing on how the pardon process works.

As Mr. Clinton notes, there is a "regular process" at the Justice Department, which considers about 300 cases submitted each year. Applicants fill out lengthy forms, submit character references and undergo an FBI background check. The Justice Department's pardon attorney reviews the case and passes it on to the Deputy Attorney General with suggestions, who passes it to the Attorney General with recommendations. The petition then goes to the White House, a process that can take years, which is probably not what Mrs. McDougal and the others have in mind.

A President is not obligated to follow this process, however. By the power vested in him by Article Two of the Constitution, a President can simply order that pardons be granted. That's what President Bush did with his Christmas 1992 pardons of former Defense Secretary Caspar Weinberger and five other government officials for conduct related to the Iran-Contra affair. Mr. Bush correctly called Independent Counsel Lawrence Walsh's pursuit of the six "the criminalization of policy differences," and his pardons put an end to it.

President Bush pointedly did not pardon five other Iran-Contra fig-

ures—Thomas Clines, Richard Secord and three others—who had either pleaded guilty or been found guilty of felonies by a jury. The difference was clear, as Terry Eastland wrote for us at the time: "The six, all government officials at the time of their 'crimes' while the five were not, did not profit or seek to profit from their actions." This precedent would rule out a pardon for Mrs. McDougal, obviously, and whatever the President's interest in stringing her along through the elections, he should tell her so.

The balance of the President's remarks are even more disturbing. He and his colleagues are obviously starting a campaign against Mr. Starr, as earlier they blocked Donald Smaltz's investigation of Don Tyson (see below). The President accuses Mr. Starr of trying to suborn lies, and coyly says it's "obvious" that Mr. Starr is out to get him and the First Lady. Earlier, in an August 25 interview on CNN, Mr. Clinton condemned "the abuse of the special-counsel law."



Susan McDougal

Now, Mr. Starr is an officer of the court, appointed pursuant to the application of Attorney General Janet Reno. His original mandate was to investigate violations of federal criminal law "relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings and Loan, Whitewater Development Corporation, or Capital Management Services Inc." On subsequent application of the Attorney General, Mr. Starr's mandate has since been expanded twice, to cover the travel office firings and the apparent abuse of FBI files by the White House security office.

If the Administration thinks Mr. Starr is abusing the office, why does it keep sending him more work? Because it delays the latest scandal through the elections. And the President is now laying a basis for turning on Mr. Starr after the elections, preparing to claim that the voters have proclaimed everyone innocent. The special prosecutor law provides that the Attorney General can dismiss an independent counsel "for good cause," though presumably the meaning of this phrase ultimately would be determined by courts on appeal.

We've never been keen on the special counsel statute, but it was upheld 8-1 by the Supreme Court. Mr. Starr is doing his appointed duty, and his mandate specifies President Clinton as among those to be investigated. In a second term, would President Clinton fire Mr. Starr, or pardon Susan McDougal, or generally use his Presidential powers to frustrate the law, or pardon his wife if indicted? In the coming election, it seems to us, the country ought to know what kind of Constitutional crisis it may be buying.

Richard Cohen

Blaming the Prosecutor

"Mrs. Clinton's explanation is simply not convincing."

For those of us who were in Washington back in 1972, the rhetoric of that presidential campaign—Richard Nixon vs. George McGovern—seemed strangely irrelevant. That June, burglars had broken into the headquarters of the Democratic National Committee, and by the fall—which is to say High Campaign Season—it was becoming increasingly clear that all the president's men, if not the president, were somehow involved. The story riveted Washington but not the rest of the nation. Nixon won in a landslide.

It would be both preposterous and irresponsible to suggest that history is repeating itself. Yet the other day, the Federal Deposit Insurance Corporation's inspector general (a mouthful right there) issued a report suggesting that Hillary Clinton was involved in a "sham" real estate transaction back when she was a lawyer in private practice. In fact, she drafted a document that was used to "deceive" federal regulators, the FDIC report alleges.

As is always the case with anything connected to what is generically called Whitewater, this matter is complicated, complex and, admittedly, dated. We are talking about real estate transactions in the mid-1980s and not anything that has occurred since the Clintons moved to 1600 Pennsylvania Avenue. And we are talking, further, about something the first lady might have done, not the president himself, and back when she was an Arkansas lawyer.

But for all of that, the words coming from the White House have a 1972 ring to them. Nixon and his various spokesmen (Bob Dole, then Republican National Committee chairman, was one) attributed questions about Watergate to unprincipled partisan politics or, in the case of *The Washington Post*, to the paper's manifest commie tendencies. Now the Clinton White House is doing something similar. Specifically, President Clinton tried to characterize independent counsel Kenneth W. Starr as a partisan prosecutor, out to score political—not legal—points.

When asked, for instance, if he agreed with Susan McDougal's lawyer's contention that she is being held in jail on contempt charges because she

will not lie about the Clintons, the president responded, "I think the facts speak for themselves. There's a lot of evidence to support that."

There is? In fact, the suggestion that Starr has sought to keep a witness in jail because she won't frame the president is preposterous on the face of it.



man of the now-defunct Senate Whitewater committee and also chairman of the nearly defunct Dole presidential campaign. Maybe D'Amato did, somehow, get to the FDIC's inspector general, but if that's the case the White House offered no proof.

Whatever the reason, the FDIC returned to a certain real estate transaction and found Mrs. Clinton's recollection of it not credible. Simply put, she has always maintained that she does not remember working on a deal that soon became notorious in Little Rock and that involved some close friends and law firm associates. Later she explained that she knew of the deal under a different name—not the one used when the government put its question to her.

Maybe. But the term used by the government, Castle Grande, was the one used by the Little Rock newspapers. It might not have been the official name of the project, but Castle Grande was far from an obscure term. Mrs. Clinton's explanation is simply not convincing. Now a different government agency has found even more reason to question her role in that smelly transaction—one in which a savings and loan was substantially looted so that insiders could make a bundle.

I still think, or maybe "hope" is the right word, that all of this will be explained one day. In the meantime, personal attacks on the independent counsel or appeals to partisan chauvinism hardly reassure me. On the contrary, this tends to make the White House look like it's hiding something. It seems to me I've heard this song before—in 1972, to be exact.

Either that, or it is time to march Starr to a wall and give him his last cigarette.

Similarly, a president schooled in the nuances of Watergate (his wife served on the Senate Watergate Committee's staff), refused to rule out a presidential pardon for either Susan or Jim McDougal, his old Whitewater partners, or Jim Guy Tucker, his successor as Arkansas governor. Instead, the president said these cases "should be handled like others." But these are witnesses who might be able to do him considerable harm. You do not have to be a member of the Wall Street Journal's rabidly anti-Clinton editorial board to detect the whiff of an offer there.

The White House used similar language in dismissing the FDIC report on Mrs. Clinton. It attributed the findings to "pressure" exerted on it by Sen. Alfonse M. D'Amato (R-N.Y.), chair-

BY BARBARA MARSHALL